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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/831,112	05/25/2001	Philippe Benaroch	24190.0003	8305

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EXAMINER

VANDERVEGT, FRANCOIS P

ART UNIT PAPER NUMBER

1644

DATE MAILED: 03/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/831,112	BENAROCH ET AL.	
	Examiner	Art Unit	
	F. Pierre VanderVegt	1644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-12, 15-52 and 54-59 is/are pending in the application.  
     4a) Of the above claim(s) 1-11, 16-31, 33-51 and 57 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12, 15, 32, 52, 54-56, 58 and 59 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

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### **DETAILED ACTION**

This application is a rule 371 continuation of PCT Serial Number PCT/FR99/02691.

Claims 13, 14 and 53 have been canceled.

Claims 1-12, 15-52 and 54-59 are currently pending.

### ***Election/Restrictions***

1. Claims 1-11, 16-31, 33-51 and 57 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 15.

Accordingly, **claims 12, 15, 32, 52, 54-56, 58 and 59 are the subject of examination in the present Office Action.**

**In view of Applicant's amendment filed November 5, 2004, no outstanding grounds of rejection are maintained.**

**The following new ground of rejection could have been applied previously to the claimed invention. Accordingly, this Office Action is made NON-FINAL.**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 12, 15, 32, 52, 54-56 and 58-59 are rejected under 35 U.S.C. 102(b) as being anticipated by Perrin-Cocon et al (Biochem. J. [1999] 338:123-130; U2 on form PTO-892).

Applicant's arguments with respect to claims 12, 15, 32 and 52 have been considered but are moot in view of the new ground(s) of rejection.

Perrin-Cocon teaches the isolation of intracellular compartments involved in antigen processing from B cells (see entire reference, Abstract in particular). Perrin-Cocon specifically teaches the isolation of vesicles containing MHC class II molecules (Abstract and page 130, 1<sup>st</sup> column in particular). Perrin-Cocon teaches that the isolated vesicles “display no morphological differences from classical endocytic vesicles” (page 123, 2<sup>nd</sup> column in particular). While Perrin-Cocon does not specifically teach that the isolated vesicles are mastocyte-derived, absent a

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showing to the contrary regarding specific properties not present in vesicles derived from other sources, membrane vesicles derived from mastocytes are not seen as being different from vesicles derived from other eukaryotic cell types. Additionally, while the instant claims are drawn to vesicles comprising recombinant MHC class II molecules, there is no structural difference between the natural MHC class II molecules taught by Perrin-Cocon and the recombinant MHC class II presently recited in the claims. The instant claims are product claims drawn to the end product, the isolated vesicle, not the starting material and mastocytes merely represent a preferred starting material which are used to produce an end product which is materially indistinct from isolated vesicles produced by other eukaryotic cells. The prior art anticipates the claimed invention.

The office does not have the facilities and resources to provide the factual evidence needed in order to establish that there is a difference between the materials, i.e., that the claims are directed to new materials and that such a difference would have been considered unexpected by one of ordinary skill in the art, that is, the claimed subject matter, if new, is unobvious. In the absence of evidence to the contrary, the burden is on the Applicant to prove that the claimed materials are different from those taught by the prior art and to establish patentable differences.

### *Conclusion*


3. No claim is allowed.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to F. Pierre VanderVegt whose telephone number is (571) 272-0852. The examiner can normally be reached on M-Th 6:30-4:00; Alternate Fridays 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on (571) 272-0841. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

F. Pierre VanderVegt, Ph.D.  
Patent Examiner  
February 14, 2005

  
PATRICK J. NOLAN, PH.D.  
PRIMARY EXAMINER  
2/17/05